

Questions and Answers for Clarification of Title II of Public Law 107-147

1. Administrative

a. Question: When is the agreement between the state and the Department of Labor effective? Is it effective with the date the state authorizing official signs the document or are both signatures required?

Answer: The agreement takes effect after enactment and both parties have signed. TEUC is payable beginning the following week.

b. Question: What is the first week payable for TEUC?

Answer: The first week payable is the first week which begins after the state enters into a TEUC agreement.

c. Question: What is the official name of the federal extension?

Answer: Temporary Extended Unemployment Compensation (TEUC).

d. Question: How will states know which states are in a TEUC EB period under the 4 percent trigger?

Answer: The Office of Workforce Security will issue a separate TEUC trigger notice identifying the states where second-tier (TEUC-X) is payable.

e. Question: Does a state have to do anything special to declare that TEUC-X is payable under the state law based on the four (4) percent trigger?

Answer: Yes. As is the case with the EB program, the state must send a letter advising the department that it is triggering "on" or "off" a second-tier period. The information currently provided by the states on the ETA 539 report will be

Questions and Answers for Clarification of Title II of Public Law 107-147

used to issue the TEUC trigger notices.

f. Question: When a TEUC EB period "OFF" indicator occurs, does the state discontinue payment of TEUC to individuals who have been determined eligible for TEUC-X benefits?

Answer: No. The ending of a TEUC EB period does not affect the payment of TEUC-X to individuals who established eligibility during the TEUC EB period. Section 203(c) provides that an individual's TEUC account shall be augmented by an amount equal to the original TEUC account if a TEUC EB period is in effect at the time of the original TEUC account exhaustion. It doesn't provide for termination of payments if the period triggers off. The ending of the TEUC EB period only affects determinations of entitlement to TEUC-X for new exhaustees. Individuals who exhaust benefits with a week of unemployment that ended after the TEUC EB period ended are not eligible for TEUC-X.

g. Question: For those states that currently have an insured unemployment rate of 4 percent or above, what is the beginning date of the TEUC EB period?

Answer: The beginning and ending of the TEUC EB Period is determined in the same manner as a regular EB period using a 4 percent insured unemployment rate (IUR) in place of 5 percent. Therefore, the TEUC EB Period begins with the third week that begins after the "ON" indicator and ends with the ending of the third week ending after the "OFF" indicator.

h. Question: If the state's IUR would cause the TEUC EB Period beginning date to precede the effective date of the TEUC agreement in a state, does the mandatory 13-week "ON" period begin with the earlier date or with the first week that begins after the agreement is in effect?

Answer: The mandatory 13-week "ON" period begins with the earlier date, because Section 203(c) of the Act does not

Questions and Answers for Clarification of Title II of Public Law 107-147

affect the normal calculation of when the period begins and ends.

2. Claimants Potentially Eligible for TEUC

a. Question: What is the universe of claimants who are potentially eligible for TEUC?

Answer: In addition to meeting state law eligibility requirements that are not inconsistent with the Act or operating instructions, any individual with a benefit year ending during the week of March 15, 2001 and thereafter who-

(1) has exhausted all rights to regular compensation;

(2) has no rights to regular or extended compensation under any state or Federal law;

(3) is not receiving compensation under the Canadian law; and who

(4) filed an initial claim (new or additional, including transitionals) for compensation during the week of or after March 15, 2001. (This condition may be met with the filing of an initial claim at any time up until the TEUC program ends.)

Example: The individual exhausted benefits with the week ending January 6, 2001, and his/her benefit year ended Saturday, June 2, 2001. The individual did not file an additional claim on that claim during or after the week that included March 15, 2001. If the individual files a new claim for regular compensation between the week of March 15, 2001 and the end of the TEUC program and is determined monetarily ineligible, he/she is potentially eligible for TEUC.

b. Question: Are individuals who filed a new claim and

Questions and Answers for Clarification of Title II of Public Law 107-147

established a benefit year or filed an additional claim on an existing benefit year, during or after the week of March 15, 2001, but received no payments before the benefit year ended potentially eligible for TEUC?

Answer: Yes, because the ending of the benefit year prevents the individual from receiving the regular benefit balance that was available. Therefore, the claimant is an exhaustee for TEUC purposes.

3. Applicable Benefit Year for TEUC Purposes

a. Question: Does an individual with a qualifying benefit year who is eligible for regular benefits on a subsequent benefit year have the option to receive TEUC based on the first benefit year?

Answer: No. An individual with existing entitlement to regular compensation is not an exhaustee for TEUC qualifying purposes.

b. Question: If an individual has two qualifying benefit years on file and has exhausted the subsequent benefit year, does the individual have the option to receive TEUC based on the first benefit year?

Answer: No. The most recently exhausted benefit year is the applicable benefit year for TEUC purposes under the definitions published in UIPL No. 17-02.

c. Question: Does TEUC entitlement exist for an individual who received some TEUC before the end of his/her benefit year and who fails to qualify on a new benefit year because he/she has not earned requalifying wages?

Answer: Yes. Individuals who are unable to qualify for benefits on a subsequent benefit year because of a failure to

Questions and Answers for Clarification of Title II of Public Law 107-147

meet the requalifying wage requirements and who otherwise meet the TEUC requirements will be eligible for TEUC. If the requalifying requirements are met, the individual will no longer meet the requirements for TEUC eligibility because he/she would no longer be an exhaustee.

4. Monetary Eligibility

a. Question: Is there a uniform 13-week duration for TEUC regardless of the regular claim maximum benefit amount (MBA)?

Answer: No. The TEUC MBA is computed as the lesser of 50 percent of the regular MBA, including dependents' allowance, or 13 times the average weekly benefit amount (WBA). Fifty percent of the regular MBA may result in less than 13 weeks of benefits.

b. Question: If there has been a recent increase in the state's WBA that applies to all benefit years on file with a balance, what impact does it have on the TEUC WBA and MBA?

Answer: The individual's TEUC WBA will be the most recent regular WBA payable applicable to the individual. The individual's MBA will represent the lesser of 50 percent of the total regular benefit MBA or 13 times the average of both WBAs paid during the benefit year.

c. Question: If an individual receives a monetary penalty on his/her regular claim, is the TEUC claim figured on the regular amount before or after the penalty (e.g., wage cancellation or reduction of the MBA)?

Answer: Before the penalty. Although Section 203(b)(1) of the Act requires that the amount in the TEUC account equal the lesser of 50 percent of the regular benefits **payable** or 13 times the average WBA, the Department has consistently held that the determination of the monetary award for federally-financed extensions should be based on the award prior to the application

Questions and Answers for Clarification of Title II of Public Law 107-147

of the penalty because to base entitlement on the lesser redetermined amount would be tantamount to imposing a second penalty for the same disqualifying act. (Refer to 20 CFR 615.5(a)(1)(i) and (b)(3)).

d. Question: When a state is in a TEUC EB period, what individuals qualify for the TEUC-X monetary determination?

Answer: Under section 203(c)(1) of the Act, only those individuals who exhaust the first-tier TEUC during the TEUC EB period.

e. Question: Does an individual who exhausts tier-one TEUC prior to the TEUC EB period "ON" indicator qualify for the second tier of TEUC?

Answer: No. A claimant who exhausts TEUC during an "OFF" indicator is not eligible for TEUC-X.

5. Base Period Employment Requirement

a. Question: Section 202(d)(2)(A) of the Act requires that the claimant have 20 weeks of full-time insured work or the equivalent in insured wages in order to qualify for TEUC (and TEUC-X, since it is based on TEUC). Is this the same as is required for EB?

Answer: Yes. State law which satisfies the requirements of 202(a)(5) of the Federal-State Extended Unemployment Compensation Act (EUCA) of 1970 satisfies this requirement.

6. Seasonal Provisions/Between Terms Denial

a. Question: Are employees of educational institutions who are denied regular benefits because of the between-and-within terms denial provisions eligible for TEUC?

Questions and Answers for Clarification of Title II of Public Law 107-147

Answer: No. Section 3304(a)(6)(A) of the Federal Unemployment Tax Act requires, as a condition of participation in the Federal-State Unemployment Compensation program, that state law prohibit, under specified circumstances, the payment of benefits based on professional services performed for educational institutions during such periods. Under section 202(d)(2) of the Act, the terms and conditions of the State law, except where inconsistent with the Act or operating instructions, apply to claims for TEUC. Therefore, the same between and within terms denial provisions of state law apply to TEUC claims.

7. TEUC EB Period Trigger

a. Question: Section 203(c)(2)(B) of the TEUC Act provides for using a modified Section 203(d) of the EUCA to determine a state's TEUC EB period. Does Section 203(f) of EUCA pertaining to the alternative total unemployment rate also apply and provide a higher TEUC MBA (i.e., 20 times WBA) during periods of a "High Unemployment Period"?

Answer: No. If a state is in a TEUC EB period when a claimant exhausts his/her first TEUC award, the claimant will receive another TEUC award equal to the first amount. Under TEUC, a claimant can potentially receive 26 weeks of benefits which is greater than the 20 week MBA payable during a "High Unemployment Period." Additionally, TEUC does not reduce EB entitlement. Therefore, if, a claimant has exhausted all TEUC or TEUC-X, and a state is in an EB period triggered under the provisions of Section 202(d) of the Act, unmodified, or Section 202(f) of EUCA, the claimant may qualify for EB.

8. Work Search/Job Service Registration Requirements

a. Question: Do the EB work search requirements apply to TEUC?

Answer: No. The work search requirements of the state

**Questions and Answers for Clarification
of Title II of Public Law 107-147**

law apply.

9. Adjudication of Issues Arising Subsequent to Exhaustion

a. Question: If an exhaustee with an existing benefit year was separated from employment after exhaustion and before the effective date of the TEUC program, is the state required to adjudicate the separation issue?

Answer: Yes.

10. TEUC Benefit Intercept

a. Question: Are TEUC payments subject to child support intercept and similar levies and attachments?

Answer: Yes. TEUC is an unemployment compensation program. As stated in 6.a. above, the terms and conditions of state law apply to TEUC, including intercepts and offsets, except where inconsistent with the Act or operating instructions.

b. Question: What is the order of priority for deductions of pension, overpayment offset, child support and income taxes?

Answer: The state will follow the same procedures that apply to regular compensation. The state will first determine the amount of UC that the individual is entitled to for a week. This means that receipt of deductible income, including retirement pay, will taken into account in determining the amount payable for the week. Next, the state must determine how much of the amount payable is to be deducted and withheld to satisfy overpayments, intercept child support, withholding of income taxes or other permissible purpose. The Department's position on the priority of withholding is stated in UIPL 17-95, Change 1:

. . . amounts required to be withheld under state law must be withheld prior to any voluntary withholding

**Questions and Answers for Clarification
of Title II of Public Law 107-147**

requested by the claimants. The Department continues to leave to the state the matter of priorities among amounts that are required to be withheld.

As a result, any overpayments or child support required to be withheld must be withheld prior to any withholding of income taxes.

c. Question: May the state intercept and apply TEUC benefits to an established UI tax delinquency?

Answer: No. Refer to UIPLs 25-89 and 45-89.

Questions and Answers for Clarification of Title II of Public Law 107-147

11. Overpayments

a. Question: Is the waiver of overpayment for equity and good conscience voluntary on the state's part or must the state have a program to consider equity and good conscience?

Answer: The waiver provision is voluntary on the part of the state.

b. Question: Does Section 206(c)(2) of the Act prohibit the recovery of TEUC overpayments until the determination is final under state law?

Answer: Yes.

c. Question: May TEUC benefits be offset to recover state UI overpayments?

Answer: Yes, if the state has a Cross-program Overpayment Offset Agreement with the Secretary, TEUC may be offset to recover state UI overpayments.

d. Question: Must all offsets be 50 percent even if state law requires a 100% offset of benefits?

Answer: No. The Act provides that the 50% limit applies only to offsets to recover TEUC. It does not apply to offsets of TEUC to recover State UI overpayments. Section 303(g) of the Social Security Act (cross-program offsets) has no 50% limit.

12. Short-Time Compensation Program

a. Question: May TEUC be paid to individuals participating in a short-time compensation (STC or worksharing) program?

Answer: Yes. Nothing in the Act prohibits such

Questions and Answers for Clarification of Title II of Public Law 107-147

payments. If an individual participating in an STC program is an exhaustee for TEUC purposes and is otherwise eligible, TEUC can be paid to the individual. It should be noted that the payment of TEUC to STC participants is unlikely to occur since (1) STC exhaustions do not occur with a high frequency and (2) an individual participating in an STC program whose benefit year has ended will have wages that must be used to establish, if possible, a new benefit year before any TEUC is payable.

13. Extensions for Approved Training

a. Question: If a state has a special extension for individuals who exhaust regular compensation and are participating in approved training, may TEUC be paid to these individuals?

Answer: Yes. For purposes of TEUC, these extended programs are considered additional benefits. Under the Act, TEUC is payable prior to any such additional benefits, because, under section 202(b)(2) of the Act, exhaustion of additional benefits is not required to qualify for TEUC.

14. Self-Employment Assistance

a. Question: May TEUC be paid to individuals participating in a self-employment assistance (SEA) program?

Answer: No. SEA is payable to individuals "in lieu of" regular UC (Section 3306(t)(1) of the Federal Unemployment Tax Act), which means they have not, in effect, exhausted regular compensation. As explained in UIPL 14-94,

individuals who have exhausted regular UC are ineligible for SEA allowances. Individuals may not receive SEA allowances in lieu of Federal-State extended benefits (EB), additional benefits (AB) entirely financed by the state, any wholly funded Federal extension of UC, or other types of compensation not meeting the definition

**Questions and Answers for Clarification
of Title II of Public Law 107-147**

of regular UC.

However, if the individual has been terminated from or voluntarily left the SEA program, and if otherwise eligible, the individual may be paid TEUC since the individual is an exhaustee for TEUC qualifying purposes.

15. TEUC Effect on Trade Readjustment Assistance (TRA)

a. Question: How does entitlement to TEUC affect the payment of basic TRA.

Answer: During the first benefit period (See 20 C.F.R. 20 617.3(h)) following the qualifying separation, a claimant is potentially entitled to 52 weeks of basic TRA minus regular, additional and extended compensation (including federally financed extensions). Therefore, entitlement to TEUC will reduce the basic TRA entitlement. In most cases, the application of this requirement will result in a worker receiving 26 weeks of regular benefits, followed by 13 weeks of TEUC, followed by 13 weeks of basic TRA for a total of 52 weeks of benefits. However, if the state is in an EB period, including one based on the substitution of "4" for "5" provided for in section 203(d)(1)(B) of EUCA, the claimant's basic TRA may be further reduced by the second tier of TEUC.

b. Question: This state has a large number of claimants covered by TRA petitions. Some of the claimants have exhausted their regular benefits and are currently receiving TRA payments. Does the state have to set up TRA overpayments and go back and start these persons in TEUC and exhaust that prior to going to TRA?

Answer: No. However, starting with the first week which begins after the state has a TEUC agreement, the state must suspend the payment of TRA until TEUC is exhausted and TEUC is deductible from TRA entitlement, as explained in 15.a. Further, the receipt of TRA will not reduce the TEUC MBA,

**Questions and Answers for Clarification
of Title II of Public Law 107-147**

because section 233(d) of the Trade Act (relating to the reduction of EB entitlement because of the receipt of TRA) does not apply to TEUC.

c. Question: An individual exhausted regular benefits and has received 5 weeks of TRA. The individual meets the eligibility requirements for TEUC and the current week claimed began after the state's TEUC agreement became effective. Should this claimant continue to be paid TRA until exhaustion before being paid TEUC?

Answer: No. Entitlement to TEUC requires that TRA be suspended. Upon exhaustion of TEUC the claimant may be entitled to resume TRA. For example, in this case, the claimant has received 26 weeks of regular benefits and 5 weeks of basic TRA. If the claimant is only eligible for 13 weeks of TEUC, upon exhaustion he/she may resume receiving the remaining basic TRA payable, in this case 8 weeks. The total basic TRA payable is 52 weeks minus regular and extended benefits, including federally financed extensions.

d. Question: The claimant has exhausted 26 weeks of regular benefits plus 26 weeks of basic TRA for a total of 52 weeks of basic TRA minus 26 weeks of regular benefits. The claimant otherwise meets the eligibility requirements for TEUC. Is this individual eligible for TEUC?

Answer: Yes, if the individual meets all the TEUC eligibility requirements. See operating instructions. TRA reduces EB entitlement but not TEUC entitlement.

e. Question: The claimant exhausted 26 weeks of regular benefits on a first claim and received 10 weeks of TRA. The claimant qualified for a second benefit year, therefore, the payment of TRA was suspended. The claimant has now exhausted all benefits available on the second claim and meets the requirements for TEUC. After exhaustion of TEUC, are TRA benefits payable?

**Questions and Answers for Clarification
of Title II of Public Law 107-147**

f. Answer: Yes, if the claimant meets all the TRA eligibility requirements. The claimant will have a TRA balance of 16 weeks. The TRA entitlement is not reduced by the amount of TEUC because the TEUC is not attributable to the first benefit period.

g. Question: If TEUC is payable before TRA, will the length of the basic TRA eligibility period or the additional TRA eligibility period be lengthened?

Answer: No. TEUC entitlement has no affect on the determination of the period of eligibility for TRA established under Section 233(a)(2) of the Trade Act.

16. Reporting Requirements

a. Question: How will TEUC claims and benefit activity be reported?

Answer: See the reporting instructions in UIPL No. 17-02, Attachment A, Section VI.